ECORD
AND
RIEFS

FILED
SEP - 5 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 16-1161

In the Supreme Court of the United States

BEVERLY R. GILL, ET AL.,
Appellants,

v.

WILLIAM WHITFORD, ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Wisconsin

BRIEF FOR *AMICI CURIAE* BIPARTISAN GROUP OF 65 CURRENT AND FORMER STATE LEGISLATORS IN SUPPORT OF APPELLEES

VINCENT LEVY
Counsel of Record
GREGORY DUBINSKY
MATTHEW V.H. NOLLER
KEVIN D. BENISH
TIMOTHY W. GRINSELL
HOLWELL SHUSTER & GOLDBERG LLP
750 Seventh Avenue
New York, NY 10019
(646) 837-5151
vlevy@hsgllp.com

Counsel for Amici Curiae

September 5, 2017

TABLE OF CONTENTS

INTEREST OF AMICI CURIAE 1

INTRODUCTION AND SUMMARY OF THE ARGUMENT 5

ARGUMENT 8

I. Partisan Gerrymandering Is A Powerful Tool For Systematically Shutting Out The Opposing Party 8

II. Modern-Day Partisan Gerrymandering Has Caused Breakdowns In The Political Process 15

A. Partisan Gerrymandering Breeds Polarization And Discourages Cooperation Among Legislators 15

B. Partisan Gerrymandering Leads To Legislators Who Do Not Or Cannot Represent Their Constituents 18

1. Partisan Gerrymandering Limits Legislators' Accountability 19

2. Partisan Gerrymandering Harms Representation By Dividing Communities 21

C. Partisan Gerrymandering Is A Substantial Cause Of The Dysfunction Of Contemporary Politics 25

III. Only This Court Can Redress The Damage Caused By Partisan Gerrymandering 28

CONCLUSION 31

APPENDIX 32

TABLE OF AUTHORITIES

Cases

Ariz. State Leg. v. *Ariz. Indep. Redistricting Comm'n*,
135 S. Ct. 2652 (2015) 8, 15, 18, 29

Benisek v. *Lamone*,
No. JKB-13-3233 (D.Md. Aug. 24, 2017) ..... *passim*

Citizens United v. *Fed. Election Comm'n*,
558 U.S. 310 (2010) 5

Davis v. *Bandemer*,
478 U.S. 109 (1986) 15, 22

Gray v. *Sanders*,
372 U.S. 368 (1963) 28

Harper v. *Va. Bd. of Elections*,
383 U.S. 663 (1966) 28

Hooker v. *Ill. State Bd. of Elections*,
63 N.E.3d 824 (Ill. 2016) 30

Hulme v. *Madison Cnty.*,
188 F. Supp. 2d 1041 (S.D. Ill. 2001) 14

In re Senate Joint Resolution of Legislative Apportionment 1176,
83 So. 3d 597 (Fla. 2012) 29

Karcher v. *Daggett*,
462 U.S. 725 (1983) 22

LULAC v. *Perry*,
548 U.S. 399 (2006) 5, 21

McConnell v. *Fed. Election Comm'n*,
540 U.S. 93 (2003) 5

Miller v. *Johnson*,
515 U.S. 900 (1995) 20

Reynolds v. *Sims*,
377 U.S. 533 (1964) 5, 8, 15, 28

Schuette v. *BAMN*,
134 S. Ct. 1623 (2014) 25

Terry v. *Adams*,
345 U.S. 461 (1953) 5, 28

Vandermost v. *Bowen*,
269 P.3d 446 (Cal. 2012) 29

Vieth v. *Jubelirer*,
541 U.S. 267 (2004) ..... *passim*

Whitford v. *Gill*,
218 F. Supp. 3d 837 (W.D. Wis. 2016) 28

Wyman v. *James*,
400 U.S. 309 (1971) 5

Constitutional Provisions

Ohio Const. art. II, § 10 18

Pa. Const. art. 2, § 17 3

Other Authorities

Aaron Marshall, *GOP-Drawn Legislative Map Makes Republicans a Virtual Lock to Hold Ohio's Legislature*,
Cleveland.com (Sept. 26, 2011),
https://goo.gl/UPweJw 3

Akhil Reed Amar, America's Constitution: A Biography (2005) 18

Anthony J. McGann et al., Gerrymandering in America: The House of Representatives, the Supreme Court, and the Future of Popular Sovereignty (2016) 9

Assembly Districts, Wis. State Leg., https://maps.legis.wisconsin.gov/ 22

Bernard Schoenburg, *Unlawful Assembly*, St. J.-Reg., Dec. 3, 2009 14

Comparison of Statewide Initiative Processes, Initiative & Referendum Inst., https://goo.gl/69LZ1R 29, 30

Cynthia Canary & Kent Redfield, *Partisanship, Representation and Redistricting: An Illinois Case Study*, Simon Rev. (Sept. 2014), https://goo.gl/cv1ecA 1, 9

Dan Boylan, *Republicans Headed Toward Keeping Veto-Proof Majorities*, News & Observer (Nov. 8, 2016), https://goo.gl/VKqz1m 2

David A. Lieb, *Analysis: Voting District Lines Favor GOP*, Detroit News (June 25, 2017), https://goo.gl/UcdLPN 13

Devin Caughey et al., *Partisan Gerrymandering and the Political Process: Effects on Roll-Call Voting and State Policies*, Election L.J. (forthcoming), https://goo.gl/Q7ZDbr 2

Editorial, *Maryland Democrats' Faux Redistricting Reform*, Wash. Post (May 12, 2017), https://goo.gl/RaoYtW 29

Editorial, *Senate Redistricting Is A Poor Marriage*, J. Times (July 13, 2011), https://goo.gl/dYuvrp 24

Editorial, *Too Many Voters Lost Between the Lines*, Detroit Free Press (Feb. 11, 2011), https://goo.gl/83VU7q 10

Editorial, *Turn Back Secretive GOP Power Play*, J. Sentinel (Feb. 5, 2017), https://goo.gl/pn6xkE 28

Franklin County House Districts, Ohio Sec. of State, https://goo.gl/1mxZrz 24

James Nord, *After Repeal, Ethics Law Supporters to Push Ballot Amendment*, Rapid City J. (Apr. 6, 2017), https://goo.gl/4HznMn 30

Jason Zengerle, *Is North Carolina the Future of American Politics?*, N.Y. Times Magazine (June 20, 2017), https://goo.gl/C43fQb 2, 26

Jim Siegel, *Voters Approve Issue To Reform Ohio's Redistricting Process*, Columbus Dispatch (Nov. 4, 2015), https://goo.gl/aqRkeu 3

John Hart Ely, Democracy and Distrust: A Theory of Judicial Review (1980) 28

Justin Levitt, Brennan Ctr. for Justice, *A Citizen's Guide to Redistricting* (2010) 14

Laura Leslie, *House GOP Seeks to Impeach Secretary of State*, WRAL.com (June 28, 2017), https://goo.gl/x54ZR8 26

Laura Leslie, *Senate Leader Defends Deep Cuts to AG's Office*, WRAL.com (June 22, 2017), https://goo.gl/f1NxD9 27

Legislative Districts of Illinois, Ill. State Board of Elections, https://goo.gl/JdKhcp 25

Len Lazarick, *New Legislative Map Targeting Republicans*, Daily Record (Dec. 19, 2011), https://goo.gl/vze2XL 12

Malcolm E. Jewell, Representation in State Legislatures (1982) 23

Maptitude for Redistricting Software, Caliper Corp., www.caliper.com/mtredist.htm 9

Matthew DeFour, *State Budget Impasse Escalates After Tense Negotiation Ends Abruptly*, Wis. State. J. (June 28, 2017), https://goo.gl/gMYb4R 25, 26

Michael Collins, *Legislature May Step Up Partisan Warfare at State House*, MarylandReporter.com (Jan. 2, 2017), https://goo.gl/VEFXsc 1, 11

Michigan State Senate Elections, 2014, Ballotpedia, https://goo.gl/xfca42 2

Mike Wereschagin, *The House Always Wins*, Caucus, Jan. 24, 2017 3

National Democratic Redistricting Committee, https://www.democraticredistricting.com 10

Nicholas O. Stephanopoulos, *Spatial Diversity*, 125 Harv. L. Rev. 1903 (2012) 23

Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831 (2015) 9, 10

Patrick Marley & Jason Stein, *GOP Lawmakers to Write Blank Check to Hire Lawyers*, J. Sentinel (Feb. 2, 2017), https://goo.gl/mVhZVs 27, 28

Redistricting Majority Project, http://www.redistrictingmajorityproject.com 10

Richard H. Pildes, *The Constitutionalization of Democratic Politics*, 118 Harv. L. Rev. 28 (2004) 16

Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv. L. Rev. 593 (2002) 18

Samuel S.-H. Wang, *Three Practical Tests for Gerrymandering: Application to Maryland and Wisconsin*, 15 Election L.J. 367 (2016) 9, 10

Samuel S.-H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, 68 Stan. L. Rev. 1263 (2016) 9

Tim Cullen & Dale Schultz, *We Led the Wisconsin Senate. Now We're Fighting Gerrymandering in Our State,* Wash. Post (June 20, 2017), https://goo.gl/eXLecW 4

INTEREST OF *AMICI CURIAE*

Amici are a bipartisan collection of 65 current and former state legislators, 26 Republicans and 39 Democrats, from the following eight States, all of which have suffered from partisan gerrymandering:

Wisconsin. Before Republicans' 2011 redistricting plan, competitive districts were the norm in Wisconsin. Control of one of the two legislative houses changed hands in four out of the five elections that took place between 2002 and 2010. In 2012, after the recent gerrymander, a majority of Wisconsin voters favored Democrats in state legislative races, but Republicans captured 60 of the 99 Assembly seats. In 2016, Democrats and Republicans were virtually tied, yet Republicans increased their majority in the Assembly to 64 seats. These election results reflect the partisan gerrymander that is the subject of this lawsuit.

Illinois. In recent years, both the Democratic and Republican parties have drawn maps that "maximize[] partisan advantage." Cynthia Canary & Kent Redfield, *Partisanship, Representation and Redistricting: An Illinois Case Study* 12, Simon Rev. (Sept. 2014), https://goo.gl/cv1ecA. Democratic map-drawers were the latest to do so, drawing maps in 2011 that permitted them to win 60% of all House seats and 68% of Senate seats in 2012, with just 52% of the vote in the state House elections and 54% in state Senate elections—a significant improvement on their results under the previous map. *Id.* at 20.

Maryland. Democrats threatened in 2006 to "bury the Republicans," Michael Collins, *Legislature May Step Up Partisan Warfare at State House,*

MarylandReporter.com (Jan. 2, 2017), https://goo.gl/VEFXsc. Through redistricting, they did. Democrats drew maps in 2011 that reflected the "specific[] inten[t] to dilute the effectiveness of Republican voters." *Benisek* v. *Lamone*, No. JKB-13-3233, slip op. at 25 (D. Md. Aug. 24, 2017) (Niemeyer, J., dissenting). As a result, Democrats today enjoy vetoproof majorities in both chambers of the state legislature, holding 70% of the seats in the state Senate and roughly 64% of the seats in the House of Delegates.

Michigan. In 2012 and 2014, Democratic candidates received a majority of the votes in elections for the Michigan House of Representatives, but Republicans won a majority of the seats. Caughey et al., *supra* (manuscript at 26). And in the 2014 state Senate elections, Republicans received a bare majority of votes—less than 51%—but won 71% of the seats. *See Michigan State Senate Elections, 2014*, Ballotpedia, https://goo.gl/xfca42 (last visited Aug. 30, 2017).

North Carolina. North Carolina's state legislative districts are "some of the most egregiously gerrymandered" in the country. Jason Zengerle, *Is North Carolina the Future of American Politics?*, N.Y. Times Magazine (June 20, 2017), https://goo.gl/C43fQb. This gerrymander has allowed Republicans to maintain supermajorities in the state General Assembly and Senate since 2013. *Id.*; *see* Dan Boylan, *Republicans Headed Toward Keeping Veto-Proof Majorities*, News & Observer (Nov. 8, 2016), https://goo.gl/VKqz1m.

Ohio. The 2011 lines, which the state apportionment board approved on a party-line vote,

gave Republicans "a virtual lock" on the state legislature for a decade. Aaron Marshall, *GOP-Drawn Legislative Map Makes Republicans a Virtual Lock to Hold Ohio's Legislature*, Cleveland.com (Sept. 26, 2011), https://goo.gl/UPweJw. In 2015, voters fed up with Ohio's "hyper-partisan process for drawing legislative districts" approved a ballot initiative to reform the redistricting process for state elections. The changes go into effect in 2021. Jim Siegel, *Voters Approve Issue To Reform Ohio's Redistricting Process*, Columbus Dispatch (Nov. 4, 2015), https://goo.gl/aqRkeu.

Pennsylvania. Legislative district lines in Pennsylvania are drawn by a five-member commission, four of whom are the majority and minority leaders of the state House and Senate. Pa. Const. art. 2, § 17(b). Those four members select the fifth member, who serves as chair. *Id.* If they are unable to agree on the chair, as has happened in every election cycle since the commission's creation, the elected members of Pennsylvania's State Supreme Court, "which has its own partisan balance of power, select[] the chair." Mike Wereschagin, *The House Always Wins*, Caucus, Jan. 24, 2017, at 6. The result is that one party controls the commission and draws lines for political gain. In 2011, Republicans controlled redistricting and used it to "lock[] down [their] hold on the Legislature." *Id.* In the 2016 elections, Republicans received 53% of the vote for the state House but won 60% of the seats. *Id.*

Rhode Island. State legislative district lines in Rhode Island are drawn by the political party that controls the legislature. In 2011, Democrats, who controlled both the state Senate and General

Assembly, created an "advisory commission" to help draw legislative boundaries and appointed 14 of the 18 members of that body, giving Republicans only one-ninth of the redistricting commission seats. The electoral maps that were subsequently enacted left Democrats in Rhode Island with an outsized role in the state legislative process. As of 2017, Democrats hold 86% of the state Senate seats and 84% of the seats in the General Assembly.

* * *

Amici served during or after the relevant gerrymandering in these States occurred, or have otherwise seen firsthand the harm that gerrymandering has inflicted upon the political process in their States. Many *Amici* are or have been involved in efforts to reform their States' redistricting procedures. *See, e.g.*, Tim Cullen & Dale Schultz, *We Led the Wisconsin Senate. Now We're Fighting Gerrymandering in Our State*, Wash. Post (June 20, 2017), https://goo.gl/eXLecW. All *Amici* have an interest in this case, which presents the Court with an opportunity to repair the damage partisan gerrymandering has caused to democracy throughout the United States.

A full list of *Amici*, with their respective States of service and party affiliation, is set forth in the Appendix.[1]

---

[1] All parties have filed blanket consents to the filing of *amicus* briefs. No counsel for a party authored this brief in whole or in part, and no person other than *Amici*'s counsel made a monetary contribution to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

"The first instinct of power is the retention of power." *McConnell* v. *Fed. Election Comm'n*, 540 U.S. 93, 263 (2003) (Scalia, J., dissenting in part), *overruled in part by Citizens United* v. *Fed. Election Comm'n*, 558 U.S. 310 (2010). True to that axiom, those in power have developed a seemingly infinite number of tools to insulate themselves from the will of the people. Some have manipulated the process by which candidates are nominated. *Terry* v. *Adams*, 345 U.S. 461 (1953). Others have diluted the voting strength of voters they do not like. *LULAC* v. *Perry*, 548 U.S. 399 (2006); *Reynolds* v. *Sims*, 377 U.S. 533 (1964). And, as in this case, yet others have "rigg[ed] elections," plain and simple, by designing legislative districts that ensure their political party never loses majority control. *Vieth* v. *Jubelirer*, 541 U.S. 267, 317 (2004) (Kennedy, J., concurring) (internal quotation marks omitted).

The single-minded quest to obtain and retain political power at the expense of the will of the people, to quote Lord Acton's famous dictum, "tends to corrupt." *Wyman* v. *James*, 400 U.S. 309, 395 (1971) (Douglas, J., dissenting). Few tools for political entrenchment have corrupted our democracy more than modern-day gerrymanders designed to entrench legislators along party lines. This brief describes some of these effects, often in *Amici*'s own words.

First, although appellants and some of their *amici* make much hay out of the assertion that partisan gerrymandering is as old as the Republic, the truth is that in recent years the two major political parties, leveraging the technologies of the modern age, have

intentionally and systematically excluded each other from state legislatures like never before. In *Amici*'s States, Democrats rigged the maps in Illinois, Maryland, and Rhode Island, while Republicans did so in Wisconsin, Michigan, Ohio, Pennsylvania, and North Carolina. This was done to entrench one party at the expense of the other, not to enact policy beneficial to the people.

Second, *Amici*'s experience is that this partisan gerrymandering has, in their States and across the Nation, sounded the death-knell of bipartisanship. When maps have been gerrymandered, candidates and legislators need worry only about primaries, which are increasingly won by politicians who cater to the far ends of the ideological poles. The result is that politicians inclined toward collaboration and bipartisanship, like *Amicus* Evan Goyke, serve under "a cloud of uncertainty" because any legislator who reaches across the aisle is in grave danger of being defeated in the next primary. As *Amicus* Daylin Leach puts it, "cooperation is heresy."

This lack of cooperation breeds distrust, dysfunction, and hostility. At best, *Amicus* Leach says, members of opposing parties ignore each other like boys and girls at "an eighth-grade dance." At worst, they war like the Montagues and Capulets: "I'll f—— any Republican I can," an Illinois Democrat in charge of redistricting once hectored a Republican colleague. The resulting malice and dysfunction are precisely the opposite of the ideal to which our democracy aspires.

Third, partisan gerrymandering has seriously damaged the relationship between legislators and the people they are sworn to represent. As those in power

grow accustomed to choosing their own voters, they stop treating the people as constituents to whom they must answer. Meanwhile, legislators in safe districts ignore constituents who support the other party because the only election that matters is the primary. Indeed, listening to those constituents creates unpalatable risks in the next primary. The result: Legislators avoid public events, hide government operations from the public eye, and, in the words of *Amicus* Kathleen Clyde, "belittle" and "mock" constituents who oppose their policies.

Even well-intentioned legislators may find it impossible to represent their constituents effectively. Gerrymandered districts often divide communities, making it next to impossible for legislators to represent community interests, and leaving voters confused about who their representatives are. *Amicus* Amy Sue Vruwink recounts how, after her district was redrawn, former constituents continued calling her for help, not realizing they had been gerrymandered out of her district. Other *Amici* describe how difficult it is for legislators to do their jobs when diverse communities with conflicting interests are grouped together.

The result of all this is that legislatures in many States are broken. This can be seen perhaps most starkly in North Carolina, where senators from the majority party recently attacked political opponents by cutting education funding from their rivals' districts. There are many other less obvious but equally damning examples in *Amici*'s States of legislatures that no longer operate the way they should.

As *Amici* attest, modern-day gerrymandering by both parties represents a grave and growing threat to the Constitution's vision of democracy. The Court has not hesitated to step in when incumbents seek to entrench themselves at voters' expense or otherwise disenfranchise those they do not like. *E.g.*, *Reynolds*, 377 U.S. at 533. As in other cases where our democracy has been structurally warped, the problem of political gerrymandering cannot be solved through the ordinary political process. The Court should take this opportunity to enforce "the core principle of republican government, namely, that the voters should choose their representatives, not the other way around." *Ariz. State Leg.* v. *Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2677 (2015) (internal quotation marks and citation omitted).

ARGUMENT

I. Partisan Gerrymandering Is A Powerful Tool For Systematically Shutting Out The Opposing Party.

In today's data-driven era, legislators who wish to secure their party's hold on power need only reach out for the block-by-block voter information and sophisticated computer programs that are both widely available. Armed with these tools, parties can solidify their electoral fortunes for years. The siren's call of this power is impossible for any self-interested politician to resist, and so it is no surprise that partisan gerrymandering is pervasive.

A. The information age has supercharged partisan gerrymandering. For a long time, the practice was ad hoc and largely ineffective, generating minor effects that were unlikely to persist across

election cycles. Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 875 (2015). Today, powerful software and detailed, block-by-block voter data enable redistricting plans to give one party huge partisan advantages that survive shifts in voter preferences and demographics. *E.g.*, *Maptitude for Redistricting Software*, Caliper Corp., www.caliper.com/mtredist.htm (last visited Aug. 30, 2017); Stephanopoulos & McGhee, *supra*, at 837-38; *see* Dkt. 149:199-201. A robust body of empirical research finds that "[t]he severity of today's gerrymandering is [] unprecedented in modern times." Stephanopoulos & McGhee, *supra*, at 836.[2]

To see how effectively partisan gerrymandering can insulate one party from voters, one need only consult how vote totals translate into seats in *Amici*'s gerrymandered States. Take, for example, the Wisconsin Assembly. In the 2012 elections, Democrats won their districts by an average vote share of 68.8%, which netted 39 Assembly seats, while Republicans were able to win far more seats (60) by creating districts with a smaller, but still comfortable, margin of 59.7%. Wang, *Application*, at 380. Or consider Illinois, where in 2012 the winning candidate in all but 16 state House and Senate districts won with more than 55% of the vote. Canary & Redfield, *supra*,

---

[2] *See* Anthony J. McGann et al., Gerrymandering in America: The House of Representatives, the Supreme Court, and the Future of Popular Sovereignty 87 (2016); Samuel S.-H. Wang, *Three Practical Tests for Gerrymandering: Application to Maryland and Wisconsin*, 15 Election L.J. 367, 380 (2016) (Wang, *Application*); Samuel S.-H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, 68 Stan. L. Rev. 1263, 1268 (2016) (Wang, *Tests*).

at 22-23. Or Michigan, where one party was guaranteed victory in 77% of the State's House and Senate districts from 2001 to 2011. Editorial, *Too Many Voters Lost Between the Lines*, Detroit Free Press (Feb. 11, 2011), https://goo.gl/83VU7q. Or Pennsylvania, where, in the words of *Amicus* Sen. Daylin Leach, "the majority of incumbents could not lose now if they were convicted of treason." *See also* Stephanopoulos & McGhee, *supra*, at 882-83; Wang, *Application*, at 378-81.

The power of modern partisan gerrymandering explains why both major parties now devote so much energy and money to the practice nationwide. Before the 2010 elections, Republicans instituted "REDMAP," a program designed to create and "solidify" Republican state and federal legislative majorities "through the redistricting process." Redistricting Majority Project, http://www.redistrictingmajorityproject.com (last visited Aug. 30, 2017). In 2009-2010 alone, REDMAP raised more than $30 million to draw favorable district lines after the 2010 Census. *Id.* Democrats have formed a similar group to focus on redistricting after the 2020 Census. National Democratic Redistricting Committee, https://www.democraticredistricting.com (last visited Aug. 30, 2017).

B. Notwithstanding the unmistakable evidence and the District Court's findings, the Wisconsin Legislature would have the Court believe that partisan gerrymandering is a noble exercise in local policymaking. Brief for Wis. State Sen. & Wis. State Assembly as *Amici Curiae* 5-6. In reality, maps have been redrawn in Wisconsin (and elsewhere) for one

reason and one reason alone: to keep the redistricting party in power.

In Wisconsin, Republicans drew the gerrymandered maps in what *Amicus* Sandy Pasch, a former Assembly Representative, calls a "very strange and secretive" process. Map-drawers worked behind closed doors at a law firm, with no input or involvement from Democrats. Republican legislators were required to sign "secrecy oaths" before they were allowed to see the new redistricting maps, and even then they were only shown the map for their specific district. And, when all was said and done, the maps were approved on undeviating party lines to secure an election-proof partisan advantage. Appellees' Br. at 10. That is hardly the process a legislature would use if it were acting to make "tough value-laden decisions" as part of "the give-and-take of the legislative process." Brief for Wis. State Sen. et al. at 8 (internal quotation marks omitted).

Partisan warfare similarly overshadowed any semblance of policymaking in other States' redistricting processes. In Maryland, Democrats bragged that, in the post-2010 redistricting process, they would "bury the Republicans six feet deep, faces up, so they won't come out for 20 years." Michael Collins, *Legislature May Step Up Partisan Warfare at State House*, MarylandReporter.com (Jan. 2, 2017), https://goo.gl/VEFXsc.

And they did. As Judge Niemeyer recently observed, "the Maryland Democrats who were responsible for redrawing congressional districts in 2011 *specifically* intended to dilute the votes of Republicans . . . ." *Benisek*, slip op. at 25 (Niemeyer, J., dissenting). "[T]hey moved 360,000 persons

(roughly one-half of the District's population) out of the former Sixth District . . . and simultaneously moved 350,000 into the 'new' Sixth District," thereby "accomplish[ing] the single largest redistricting swing of one party to another of any congressional district in the Nation." *Id.* at 25-26. These same tactics were used in redrawing the maps for the Maryland Legislature. *Amicus* Michael Malone, a Republican member of the Maryland House of Delegates, notes that "even after historic 2014 Republican membership gains in the Maryland House of Delegates and a Republican Governor being elected, Democrats still enjoy vetoproof majorities in both chambers of the Maryland Legislature today."

In Ohio, the apportionment board that drew the State's legislative districts in 2011 was made up of four Republicans and one Democrat. *Amicus* Representative Kathleen Clyde sat in for the Democratic member at a few board hearings and says that Democrats were "completely shut out of the process. Everything was done in back rooms and brought out at the very last minute with very little opportunity for public input." Republicans now enjoy an unshakeable majority in the state legislature for the rest of the decade, simply because Republicans drew the district lines in their favor.

C. The raw power grab that underlies modern gerrymandering is perhaps most obvious when district lines are used to threaten or disempower individual political opponents. In Maryland, the Democratic House Speaker gerrymandered his strongest challenger (a Republican) into another district. Len Lazarick, *New Legislative Map Targeting*

Republicans, Daily Record (Dec. 19, 2011), https://goo.gl/vze2XL.

Similarly, in 1991, Michigan Republicans cut *Amicus* Rep. Dianne Byrum's house from her district so precisely that she "could see [her former] district from [her] front door." Ten years later, in the midst of the 2011 redistricting, a top Michigan Republican legislator showed two potential redistricting plans to *Amicus* Rep. Lisa Brown, the first (and, so far, only) Democrat to represent her district. One map kept Rep. Brown's home in her district, and the other moved her into a predominantly Republican district. The lawmaker told Rep. Brown that, if she agreed to vote with Republicans, they would adopt the more favorable map. When she refused, the Republicans "gerrymandered [her] out of [her] district." David A. Lieb, *Analysis: Voting District Lines Favor GOP*, Detroit News (June 25, 2017), https://goo.gl/UcdLPN. As Rep. Brown explains, the Republicans viewed her seat as "theirs."

Rep. Pasch suffered a similar fate. In 2011, she ran against Republican Senator Alberta Darling in a recall election. In the midst of the recall race, map-drawers "demolished" Rep. Pasch's Assembly district by carving it into five new districts. After the gerrymander, her new district was 57% Republican, and a Republican won the new district in the 2012 election. Republican Assembly leaders later told Rep. Pasch that Senate Republicans demanded the changes to her district to "screw[]" her for "running against Alberta." This was not an isolated incident. Shortly after the maps were drawn, a Republican Assembly leader approached *Amicus* Amy Sue

Vruwink, then a Democratic Representative, and bragged, "We f——ed you. We f——ed you good."

Partisan rancor (and foul language) also dominated the 2001 redistricting of the County Board for Madison County, Illinois. Early in the process, the Democrat in charge of redistricting told a Republican colleague, "We are going to shove [the map] up your f—— ass and you are going to like it, and I'll f—— any Republican I can." *Hulme* v. *Madison Cnty.*, 188 F. Supp. 2d 1041, 1051 (S.D. Ill. 2001) (internal quotation marks and citation omitted). At another meeting, he threatened a different Republican: "I'll tell you right now, mother f——r, if you open your mother f—— mouth, I'm gonna have your mother f—— ass moved out by the mother f——g police." *Id.* at 1050. And at the final meeting, after the Board approved the Democratic map, the Democratic leader publicly tore up a Republican-proposed map. *Id.* at 1051. This recalled Illinois's 1981 state redistricting, which devolved into fisticuffs when a Republican Senator tried to charge at the Senate President, and a Democratic colleague stopped him with a punch to the jaw. Justin Levitt, Brennan Ctr. for Justice, *A Citizen's Guide to Redistricting* 13 (2010); Bernard Schoenburg, *Unlawful Assembly*, St. J.-Reg., Dec. 3, 2009.

These episodes underscore an unassailable fact: Partisan gerrymanders in Wisconsin and elsewhere are not about policymaking. They are power's means of preserving itself, reflecting an effort to reserve seats in the legislature for one party at the expense of the other. And they have pernicious effects on the political process in statehouses across the Nation.

II. Modern-Day Partisan Gerrymandering Has Caused Breakdowns In The Political Process.

"The object of districting is to establish 'fair and effective representation for all citizens.'" *Vieth*, 541 U.S. at 307 (Kennedy, J., concurring) (quoting *Reynolds*, 377 U.S. at 565). The facts on the ground, however, establish that modern-day partisan gerrymanders intend to and do subvert the ideal of fair representation.

In *Amici*'s States, recent years have shown that partisan gerrymandering has contributed to a significant breakdown in democratic norms and governance. Legislatures have become ideologically polarized, beset by interpersonal rancor, and responsive only to a fraction of the electorate. *Amici*'s experiences confirm what this Court has recognized: Gerrymanders that are systematically designed to put one party in power no matter the will of the people "are incompatible with democratic principles." *Ariz. State Leg.*, 135 S. Ct. at 2658 (alterations and internal quotation marks omitted).

A. Partisan Gerrymandering Breeds Polarization And Discourages Cooperation Among Legislators.

1. Partisan gerrymanders create "safe" districts for parties, with the result that the composition of state legislatures becomes more polarized. To see why that is so, consider the way gerrymanderers achieve their objective of reserving districts along party lines: Draw a small number of districts the opposing party will win by lopsided margins, and draw a large number of districts the redistricting party will win by narrower margins. *Davis* v. *Bandemer*, 478 U.S. 109,

115-17 & n.6 (1986). This process creates an overwhelming number of safe districts, with the gerrymandering party guaranteed to win in a majority of districts and the other party guaranteed to win in a minority.

Candidates in safe, gerrymandered districts are bound to appeal to primary voters, who tend to be farther from the ideological center. Once a candidate is selected as the party's standard-bearer, the fix is in. In the general election, members of the majority party reliably support their party's candidate, and candidates in safe districts therefore need not and do not temper their views. Richard H. Pildes, *The Constitutionalization of Democratic Politics*, 118 Harv. L. Rev. 28, 114-15 (2004).

The absence of competitive districts thus leads to legislators who do not reflect the ideological preferences of the people they represent. Consider a district composed of 60% Republicans and 40% Democrats, who reliably vote for their respective parties. Barring an extraordinary event, the district is safely Republican. To win the Republican primary, a candidate need only win votes from just over 30% of the total voters. In our two-party system, cross-party voting is relatively uncommon, and the smart candidate understands that his political fortunes depend on responsiveness to the 30% needed to win the primary—and nothing else.

2. Just as candidates in a gerrymandered district have little incentive to appeal to moderate voters in general elections, legislators in a gerrymandered State also have little incentive to cooperate with the opposing party or to endorse more moderate policies once they are in office. Quite the

opposite. "It's like an eighth-grade dance," says Sen. Leach. "When you go to a dinner, the Democrats are sitting on one side of the room, and the Republicans are sitting on the other. It's embarrassing."

Amici explain that in many of their States, earning a reputation for bipartisanship is the surest way to lose the next primary—and their seat. "Cooperation is heresy," Sen. Leach says. He describes multiple meetings with Republicans who say they cannot help him with legislation—even legislation they support—because, they say, "I'll get a primary, and my district is drawn in such a way that I couldn't survive that." *Amicus* Evan Goyke, a Democratic Representative in the Wisconsin Assembly, serves under "a cloud of anxiety" because he has been told that he is too willing to cooperate with Republicans. Other Democrats have told him that "working with Republicans is a negative," and threaten that he will face a primary challenger unless he "give[s] the[] [Republicans] hell and never give[s] an inch."

In many States, the decline of bipartisanship means that representatives from the minority party—and, therefore, their constituents—are shut out of the legislative process. Following the redistricting in Wisconsin, Republican lawmakers enacted new rules that limit Democrats' ability to speak on legislation and refused to consider Democrat-sponsored amendments. As Rep. Pasch puts it, "Not only could [Democrats] not legislate, now we could not speak."

Similarly, Rep. Clyde reports that Democrats in Ohio are not allowed to send newsletters to their constituents until Republican leaders review them, whereupon they sometimes require the removal of content critical of Republican legislators or policies.

Republican leaders also regularly prohibit Democrats from reserving committee rooms at the state capitol building for informational meetings, and refuse to publish Democrats' notes of protest in the legislative record, despite the Ohio Constitution's guarantee that protests "shall, without alteration, commitment, or delay, be entered upon the journal." Ohio Const. art. II, § 10.

B. Partisan Gerrymandering Leads To Legislators Who Do Not Or Cannot Represent Their Constituents.

"'The genius of republican liberty seems to demand . . . not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people.'" *Ariz. St. Leg.*, 135 S. Ct. at 2674-75 (quoting *The Federalist* No. 37, at 223 (C. Rossiter ed. 1961) (James Madison)). Sovereignty under our Constitution ultimately rests with the people, and it is to the people that legislators must be held accountable. *See* Akhil Reed Amar, America's Constitution: A Biography 5, 10-13 (2005).

Modern-day partisan gerrymanders undermine the ideal of accountable legislators by entrenching a party in power regardless of whether it enjoys overall support among the State's voters. Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv. L. Rev. 593, 616 (2002). As in Michigan, extreme gerrymanders can even provide majority control to "a party that enjoys only minority support among the populace." *Vieth*, 541 U.S. at 360 (Breyer, J., dissenting). Even in States where the results are not as stark as in Michigan, the effects of gerrymandered elections are perverse and pervasive.

Appellants and their *amici* contend that the Court should presume that legislators in gerrymandered districts are responsive to the concerns even of those who supported their opponents. Brief of Wis. State Sen. at 23-24.[3] Although all politicians should strive to represent all their constituents, the reality in Wisconsin (and elsewhere) is otherwise, because gerrymandering gives legislators the incentive to ignore general-election voters who do not represent the views of their party. Judicial intervention is necessary precisely because gerrymandering subverts the ideal that legislators should represent all their constituents.

1. Partisan Gerrymandering Limits Legislators' Accountability.

Partisan gerrymandering harms all voters. For the voters whose political power a partisan gerrymander aims to diminish, an inability to elect and influence legislators amounts to exclusion from the political process. These constituents have been silenced and deprived of an effective vote and voice in the legislative process—an unconstitutional burden on their "representational rights . . . for reasons of ideology, beliefs, or political association." *Vieth*, 541 U.S. at 315 (Kennedy, J., concurring).

The injury does not stop there. Gerrymandering causes legislators to treat even members of their own party in purely instrumental terms, moving them

---

[3] This major premise underlies a number of their other arguments, including the assertion that there is no constitutional right to proportional representation. Brief of Wis. State Sen. et al. at 17-19. The harm of partisan gerrymandering is not the loss of proportional representation—it is the loss of *any* representation.

around the map as necessary to secure seats. This weaponization of demography robs voters of their agency and demeans their status as individuals with unique experiences, beliefs, and desires. In the words of *Amicus* Dale Schultz, formerly Wisconsin's Republican Senate Majority Leader, "partisan gerrymandering dilutes democracy by taking away a voter's ability to voice their particular beliefs to legislators who will acknowledge them." *Cf. Miller* v. *Johnson*, 515 U.S. 900, 911-12 (1995) (requiring States to treat voters "as individuals, not as simply components of a racial, religious, sexual, or national class" (internal quotation marks omitted)). Gerrymandering thus impedes legislators from discharging their sacred trust—to work to improve the lot of all the people.

Wisconsin *Amici* detail the sad circumstances in their State, where legislators have stopped engaging with constituents. *Amicus* Mark Pocan, a Wisconsin Congressman who served in the State Assembly for fourteen years, explains that many state legislators "don't want to engage with the public because they don't want voters to know what's actually going on in the statehouse." Wisconsin legislators in safe seats entirely ignore communications from voters of the opposite party: Phone calls are disregarded, letters thrown away, emails deleted. They refuse to hold hearings where voters might challenge them, and they skip community events. Assembly leaders have gone so far as to bar citizens from bringing writing materials to the Assembly—not even "paper for their kids to doodle on," according to Rep. Pasch. It is "an effort to silence and to control [constituents] in a very scary, nontransparent way."

Amicus Rick Glazier, a former Representative in the North Carolina House, similarly describes a post-gerrymander legislature in which "anything of significance is drafted in secret" without an opportunity for public input and debate. The majority "want[s] public dissent limited . . . and they want to prevent the minority party from creating a record for future litigation."

And in Ohio, legislators from the majority party are "very hostile to witnesses who oppose or are interested in their legislation," Rep. Clyde says. Citizens "have the right to testify on these bills, and if they oppose a bill it is open season for [legislators] to belittle them, mock them, limit their time, interrupt them during their discussion, [and] apply rules to them that don't apply to supporters of the legislation. Treating members of the public that way is outrageous."

2. Partisan Gerrymandering Harms Representation By Dividing Communities.

Even when legislators want to represent their constituents, partisan gerrymandering can make it all but impossible. Although partisan gerrymandering does not always translate into oddly shaped districts, it often involves and requires dividing communities.[4]

---

[4] *See* J.A. 49-56 (illustrating egregious instances in Wisconsin's 2011 redistricting plan); *see also LULAC*, 548 U.S. at 441 (gerrymander "br[oke] apart a Latino opportunity district" and "creat[ed] an entirely new district that combined two groups of Latinos, hundreds of miles apart, that represent different communities of interest"); *id.* at 479-80 (Stevens, J., concurring in part and dissenting in part) (gerrymander "splintered and submerged" minority community into majority white districts);

These tactics—splitting up similar communities and combining disparate communities—harm representation and accountability in distinct but related ways.

a. Representative "democracy can work well and fairly only when citizens have an opportunity to become familiar with their voting districts, where they must focus their political activities." *Davis*, 478 U.S. at 173 n.13 (Powell, J., concurring in part and dissenting in part). But when gerrymandered district lines divide previously unified communities for partisan expediency, confusion arises among legislators and voters alike, making it difficult if not impossible for the well-intentioned legislator to represent his or her district.

For example, Rep. Vruwink served in the Wisconsin Assembly from 2003 until 2014. The 2011 redistricting changed her district (the 70th) from a compact square covering two counties to a long "staircase" cutting through parts of four. *See Assembly Districts*, Wis. State Leg., https://maps.legis.wisconsin.gov/ (last visited Aug. 29, 2017). Constituents she had represented from 2003 to 2010 would call her for constituent services, not realizing they had been removed from her district in 2011. Conversely, Sen. Leach describes a recent phone

---

Vieth, 541 U.S. at 340 (Stevens, J., dissenting) (gerrymander "split[] up towns and communities"); *Davis*, 478 U.S. at 176-77 (Powell, J., concurring in part and dissenting in part) (gerrymander "divid[ed] established communities" and "dissect[ed] counties into strange shapes lacking in common interests"); *Karcher* v. *Daggett*, 462 U.S. 725, 762-64 (1983) (Stevens, J., concurring) (gerrymander "disregard[ed] county boundaries" and packed Republicans into "long," "twisted" districts containing segments of multiple counties).

call with a constituent, in which he explained that he is running for office in Pennsylvania's 7th Congressional District. His constituent's response: "Am I in the 7th District?"

Amicus Michael Curtin, a former Ohio House Representative, also describes the confusion his constituents experienced. While campaigning in 2012, Rep. Curtin went door to door to speak to numerous constituents who, after the 2011 gerrymander, did not know who their representative was and did not understand why their district lines had changed so much.

The damage caused by this confusion is evident. *Amici* from Wisconsin note a decline in new Democratic candidates willing to run for elected office, while in Maryland, there is "anecdotal evidence of Republicans not voting after the redistricting because of confusion or loss of interest." *Benisek*, No. JKB-13-3233, slip op. at 56 (Niemeyer, J., dissenting).

b. Gerrymanders that divide communities, even when they do not cause confusion, create districts occupied by dissimilar voters whose interests may vary wildly. Nicholas O. Stephanopoulos, *Spatial Diversity*, 125 Harv. L. Rev. 1903, 1919 (2012). Representatives in such districts complain that they "'simply [cannot] "represent" the views of . . . diverse groups when there are sharp conflicts.'" *Id.* at 1920 (quoting Malcolm E. Jewell, Representation in State Legislatures 117 (1982)); *see also id.* at 1945 (finding empirically that "representation [is] less responsive in . . . highly heterogeneous districts"). This is not just a matter of trying to represent an ideologically diverse constituency but also a serious practical concern; as *Amicus* David Parker, a former Republican

Representative from Pennsylvania, puts it, a district that covers multiple different communities "spreads you pretty thin and gives you less time to focus on each one."

Rep. Curtin describes the senseless shape of his former district in Ohio as "a seahorse cut up by a boat propeller." It begins in Marble Cliff, an affluent village in Franklin County. It separates Marble Cliff from its "sister city" Grandview Heights, with which it shares a school district, library district, and municipal services. The district juts southwest from Marble Cliff, then hooks east to capture low-income areas in southwest Columbus before trailing south into the sparsely populated areas north of Pickaway County. *See Franklin County House Districts*, Ohio Sec. of State, https://goo.gl/1mxZrz (last visited Aug. 29, 2017).

Similarly, Wisconsin's 2011 gerrymander combined Racine and Kenosha into a single Senate district, forcing together the two cities, which have "separate school districts, separate newspapers, separate histories, and distinct and often separate goals," while divorcing them from the rest of their counties. Editorial, *Senate Redistricting Is A Poor Marriage*, J. Times (July 13, 2011), https://goo.gl/dYuvrp.

South of the border in Illinois, redistricters showed a similar lack of respect for communities of interest. The 2011 gerrymander split Springfield into three pieces. One piece was placed into an Assembly District with Decatur, 40 miles to the east, and several rural areas in between, all of which have different social and economic characteristics. Decatur dominates the district, burdening voters in

Springfield and the rural areas. *See Legislative Districts of Illinois*, Ill. State Board of Elections, https://goo.gl/JdKhcp (last visited Aug. 29, 2017).

These sorts of divisions are the sine qua non of partisan gerrymandering. By drawing lines that divide communities to achieve political power, however, map-drawers leave community interests by the wayside.

C. Partisan Gerrymandering Is A Substantial Cause Of The Dysfunction Of Contemporary Politics.

In combination, the factors discussed above—seats reserved to ensure a majority for the redistricting party, hyper-partisan representatives, lack of cooperation in the statehouses, and district lines that divide communities—result in a toxic legislative environment. Legislators from different parties increasingly view one another with contempt, and the chief goal of politics is now tribalism, not public service. "[R]ational, civic discourse" is the best way "to form a consensus to shape the destiny of the Nation and its people." *Schuette* v. *BAMN*, 134 S. Ct. 1623, 1637 (2014) (plurality opinion). Under political gerrymanders, however, partisan warfare is the lodestar, and the people are the losers.

In today's troubled environment, legislation in Wisconsin is enacted, if at all, along party lines and solely to support party objectives. Just this past summer in Wisconsin, the State's budget process "ground to a halt" after legislative relations among the Republicans themselves broke down. Matthew DeFour, *State Budget Impasse Escalates After Tense Negotiation Ends Abruptly*, Wis. State. J.

(June 28, 2017), https://goo.gl/gMYb4R. Despite this impasse—and the fact that Wisconsin state law required a new budget to be enacted by July 1—the Assembly Speaker expressed "no interest" in working with Democrats, with the consequence that Wisconsin is facing one of its worst budget delays in 40 years. *Id.*

Amicus Timothy Cullen, a former Wisconsin State Senator, notes that this trend pervades the lawmaking process in Wisconsin. The State historically established nonpartisan "study committees" every other summer to develop bipartisan legislation on complex issues concerning the environment, criminal justice, health care, and other matters, and these committees' proposals generally became law with overwhelming bipartisan support. After the gerrymander, however, legislators are "not ever interested in gaining bipartisan support" and the study committees are no longer relied upon to craft bipartisan solutions. The result is that policy objectives that both parties support never become law.

In some States, the majority party has used its control of the legislature to vindictively target the minority or further entrench themselves in office—and often harm their opponents' constituents in the process. Republican Senators in North Carolina recently "punish[ed]" Democrats who delayed budget legislation by "stripping $1 million in education funding from the[ir] districts." Zengerle, *supra*. The state House also "slashe[d] the budgets" of the Democratic Governor and Attorney General, Laura Leslie, *House GOP Seeks To Impeach Secretary of State*, WRAL.com (June 28, 2017), https://goo.gl/x54ZR8, because "Republican leaders don't agree with how [the Attorney General] is doing

his job," Laura Leslie, *Senate Leader Defends Deep Cuts to AG's Office*, WRAL.com (June 22, 2017), https://goo.gl/f1NxD9.

Less blatant but equally problematic: In Ohio, Rep. Clyde describes how "capital appropriations and general revenue funds [are] dispersed in a political way" to favor expenditures in Republican districts, which "put[s] people who are represented by Democratic representatives at a disadvantage."

These measures were enacted by statute, albeit along party lines. But in gerrymandered States, majority parties also use procedural shenanigans to protect themselves from public scrutiny and debate with fellow legislators. *Amicus* Pam DeLissio, a State Representative from Pennsylvania, notes that her State's "whole budget process often does not include Democrats at the negotiation table." On a recent and controversial budget code bill, those in control of the process prevented members of the minority party from even reviewing the legislation until minutes before the vote. According to Rep. DeLissio, "when this legislation reached the floor, it passed with the bare majority of votes. There was no hearing on the bill. There was no conversation about this issue. This is what gerrymandering has done." And in Wisconsin, Republican leaders used back-door methods to authorize the funding of an *amicus* brief in this case in support of appellants, at taxpayers' expense and with no cap on fees, without debate or a vote on the statehouse floor. Patrick Marley & Jason Stein, *GOP*

Lawmakers to Write Blank Check To Hire Lawyers, J. Sentinel (Feb. 2, 2017), https://goo.gl/mVhZVs.[5]

III. Only This Court Can Redress The Damage Caused By Partisan Gerrymandering.

This Court has, on many occasions, been called upon to safeguard the democratic process from self-interested officeholders bent on manipulating elections. John Hart Ely, Democracy and Distrust: A Theory of Judicial Review 120-25 (1980); *see, e.g.*, *Harper* v. *Va. Bd. of Elections*, 383 U.S. 663, 665-66 (1966) (poll taxes); *Reynolds*, 377 U.S. at 562-63 (malapportionment); *Gray* v. *Sanders*, 372 U.S. 368, 379-81 (1963) (vote weighting); *Terry*, 345 U.S. at 469-70 (white primaries). Partisan gerrymandering warrants the same response. In this case, the District Court identified a standard that it found appropriately captured the partisan intent and effect of the Wisconsin gerrymander, *Whitford* v. *Gill*, 218 F. Supp. 3d 837, 884 (W.D. Wis. 2016), but whatever standard this Court adopts, judicial intervention is sorely needed.

The nature of partisan gerrymandering indeed ensures that it cannot be undone through ordinary politics. Legislators who benefit from the practice

---

[5] "The plan was approved 5-3 by an Assembly committee and 3-2 by a Senate committee. All Republicans voted for it and all Democrats voted against it." *Id.* The Assembly Minority Leader "asked that legislators hold a public meeting to discuss the plan before approving it, but Republicans rejected his suggestion and proceeded with their plan to hire the law firms behind closed doors." *Id.* The editorial board of a newspaper that had previously endorsed Republican Governor Scott Walker criticized the decision for its secrecy and expense. Editorial, *Turn Back Secretive GOP Power Play*, J. Sentinel (Feb. 5, 2017), https://goo.gl/pn6xkE.

have no incentive to halt it, despite "the almost universal absence of those who will defend its negative effect on our democracy." *Benisek*, No. JKB-13-3233, slip op. at 27 (Niemeyer, J., dissenting). This state of affairs is self-perpetuating: Whichever political party controls redistricting can draw maps that guarantee it retains power until the next redistricting, at which point it can again draw maps that guarantee it retains power until the *next* redistricting, and on and on. *See, e.g.*, Editorial, *Maryland Democrats' Faux Redistricting Reform*, Wash. Post, May 12, 2017 (describing how Republicans' proposal to create an independent redistricting commission was "killed in committee by Democrats" without a hearing).

True, voters in some States have tried in recent years to address partisan gerrymandering through reforms such as independent redistricting commissions and constitutional amendments. *See Ariz. State Leg.*, 135 S. Ct. at 2658 (Arizona commission); *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 598-99 (Fla. 2012) (Florida constitutional amendment); *Vandermost* v. *Bowen*, 269 P.3d 446, 452 (Cal. 2012) (California commission). These recent initiatives demonstrate voter dissatisfaction with partisan gerrymandering. But they also underscore the necessity of judicial intervention because the reforms, while laudable, are not a realistic option in most States.

The majority of States do not have any mechanism for citizen-driven lawmaking initiatives. *Comparison of Statewide Initiative Processes* 1, Initiative & Referendum Inst., https://goo.gl/69LZ1R

(last visited Aug. 30, 2017). Even when such a mechanism is available, some States may not allow initiatives that address redistricting. *See Hooker* v. *Ill. State Bd. of Elections*, 63 N.E.3d 824, 825 (Ill. 2016) (holding that ballot initiative to create independent redistricting committee violated Illinois Constitution). And, in every State but California, the legislature can repeal laws passed by initiative. Initiative & Referendum Inst., *supra*, at 26-27; *see* James Nord, *After Repeal, Ethics Law Supporters To Push Ballot Amendment*, Rapid City J. (Apr. 6, 2017), https://goo.gl/4HznMn (discussing the South Dakota legislature's repeal of an ethics law passed via ballot initiative).

The Court, by contrast, has the ability to craft a nationwide standard that will put partisan gerrymanderers in check. The Court is therefore in the best position to repair the damage partisan gerrymandering has done to the political process throughout the Nation.

CONCLUSION

The Court should affirm the judgment of the District Court.

Respectfully submitted,

VINCENT LEVY
Counsel of Record
GREGORY DUBINSKY
MATTHEW V.H. NOLLER
KEVIN D. BENISH
TIMOTHY W. GRINSELL
HOLWELL SHUSTER &
GOLDBERG LLP
750 Seventh Avenue
New York, NY 10019
(646) 837-5151
vlevy@hsgllp.com

Counsel for Amici Curiae

September 5, 2017

APPENDIX

Amici consist of the following current and former state legislators, all of whom are represented by counsel in their individual capacity only:

1. State Rep. Jimmy Anderson of Wisconsin (Democrat)
2. State Rep. Nickie J. Antonio of Ohio (Democrat)
3. U.S. Senator Tammy Baldwin of Wisconsin (Democrat, former member of the Wisconsin State Assembly)
4. Former State Rep. Mandela Barnes of Wisconsin (Democrat)
5. Former State Rep. Spencer Black of Wisconsin (Democrat)
6. State Senate Republican Leader William E. Brady of Illinois (Republican)
7. Former State Rep. Lisa Brown of Michigan (Democrat)
8. Former State Rep. Dianne Byrum of Michigan (Democrat)
9. State Rep. Kathleen Clyde of Ohio (Democrat)
10. State Sen. Michael Connelly of Illinois (Republican)
11. Former State Senate Majority Leader Timothy F. Cullen of Wisconsin (Democrat)
12. Former State Rep. Michael F. Curtin of Ohio (Democrat)
13. State Rep. Mary Jo Daley of Pennsylvania (Democrat)

14. Former State Rep. Chris Danou of Wisconsin (Democrat)
15. State Rep. Pamela A. DeLissio of Pennsylvania (Democrat)
16. Former State Rep. Margaret Dickson of North Carolina (Democrat)
17. State Rep. Scott Drury of Illinois (Democrat)
18. State Rep. Michael R. Fortner of Illinois (Republican)
19. Former State Sen. Linda Garrou of North Carolina (Democrat)
20. Former State Rep. Rick Glazier of North Carolina (Democrat)
21. State Rep. Evan Goyke of Wisconsin (Democrat)
22. State Rep. Abdullah Hammoud of Michigan (Democrat)
23. State Rep. Kevin Hertel of Michigan (Democrat)
24. Former Deputy Minority Leader Sen. Dawson Hodgson of Rhode Island (Republican)
25. State Rep. Jeanne M. Ives of Illinois (Republican)
26. Former State Rep. Andy Jorgensen of Wisconsin (Democrat)
27. Former State Sen. Franklin L. Kury of Pennsylvania (Democrat)
28. State Rep. Donna Lasinski of Michigan (Democrat)

29. Former State Rep. Joan W. Lawrence of Ohio (Republican)

30. State Sen. Daylin Leach of Pennsylvania (Democrat)

31. State Delegate Michael E. Malone of Maryland (Republican)

32. Former State Rep. David Martin of Wisconsin (Republican)

33. State Sen. Dan McConchie of Illinois (Republican)

34. State Sen. Karen McConnaughay of Illinois (Republican)

35. Former State Sen. Priscilla D. Mead of Ohio (Republican)

36. Congresswoman Gwen Moore of Wisconsin (Democrat, former member of the Wisconsin State Senate and State Assembly)

37. State Sen. Chris Nybo of Illinois (Republican)

38. State Rep. David S. Olsen of Illinois (Republican)

39. Dane County Executive Joe Parisi of Wisconsin (Democrat, former member of the Wisconsin State Assembly)

40. Former State Rep. H. Sheldon Parker, Jr., of Pennsylvania (Republican)

41. Former State Assembly Assistant Minority Leader Sandy Pasch of Wisconsin (Democrat)

42. Congressman Mark Pocan of Wisconsin (Democrat, former member of the Wisconsin State Assembly)

43. State Rep. Robert W. Pritchard of Illinois (Republican)

44. Former State Rep. Daniel P. Reilly of Rhode Island (Republican)

45. State Sen. Sue Rezin of Illinois (Republican)

46. State Sen. Dale A. Righter of Illinois (Republican)

47. State Sen. Chapin Rose of Illinois (Republican)

48. Former State Sen. Peggy A. Rosenzweig of Wisconsin (Republican)

49. State Sen. Joe Schiavoni of Ohio (Democrat)

50. Former State Rep. Marlin Schneider of Wisconsin (Democrat)

51. Former State Senate Majority Leader Dale W. Schultz of Wisconsin (Republican)

52. Former State Rep. David Segal of Rhode Island (Democrat)

53. Deputy State Senate Republican Leader Dave Syverson of Illinois (Republican)

54. State Sen. Heather Steans of Illinois (Democrat)

55. Former State Rep. David J. Steil of Pennsylvania (Republican)

56. Councilman Michael Stinziano of Ohio (Democrat, former member of the Ohio State House of Representatives)

57. State House Democratic Leader Fred Strahorn of Ohio (Democrat)

58. State Rep. Emilia Strong Sykes of Ohio (Democrat)

59. State Sen. Vernon Sykes of Ohio (Democrat)

60. Former State Sen. Daniel O. Theno of Wisconsin (Republican)

61. State Sen. Jil Tracy of Illinois (Republican)

62. Former State Rep. Amy Sue Vruwink of Wisconsin (Democrat)

63. State Sen. Chuck Weaver of Illinois (Republican)

64. State Rep. Robert Wittenberg of Michigan (Democrat)

65. Former State Rep. Mandy Wright of Wisconsin (Democrat)